

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

MILLER-DWAN MEDICAL CENTER

Employer

and

UNITED STEELWORKERS OF AMERICA,
AFL-CIO, CLC

Petitioner

Case 18-RC-16413

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in connection with this proceeding to the undersigned. Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹

¹ The Employer, Miller-Dwan Medical Center, is a Minnesota corporation engaged in the operation of an acute-care hospital in Duluth, Minnesota, and the operation of dialysis unit satellite facilities located in Grand Rapids and Eveleth, Minnesota, and Superior and Ashland, Wisconsin. The Employer annually grosses revenues in excess of \$1 million, and it annually purchases goods or services valued in excess of \$50,000 directly from suppliers located outside the State of Minnesota.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The petition seeks an election in a unit of all technical employees employed by the Employer, excluding licensed practical nurses. The Employer contends that Petitioner cannot represent the technical employees in a unit separate from the licensed practical nurses (LPNs); and that a current contract between the Employer and Minnesota Licensed Practical Nurses Association (MLPNA), which represents the Employer's LPNs, is a bar to the instant petition.

The Employer's hospital facility contains 165 licensed beds, and the average in-patient census is 90. At the time of the hearing the Employer employed about 810 employees at the hospital, and a total of 836 employees when employees employed at the satellite facilities are included. The Employer currently has collectively bargained agreements with the International Union of Operating Engineers Local No. 70 effective from January 1, 1997 through December 31, 1999, covering nine plant service employees; with United Food and Commercial Workers Union Local No. 1116 effective from April 1, 1998 until March 31, 2001, covering 128 service and janitorial employees; with Minnesota Nurses Association effective from July 1, 1998 to June 30, 2001, covering 176 registered nurses; and with MLPNA effective until September 30, 1999, covering 107 licensed practical nurses employed by the Employer.² At the time of the

² No motions to intervene were made prior to the issuance of the instant Decision.

hearing the Employer employed no LPNs who performed work as LPNs and who were unrepresented by a labor organization.

The parties agree that the technical employees employed by the Employer (other than LPNS) have not been represented by a labor organization historically. They further agree that, as of the date of hearing, the Employer employed 79 technical employees at its Duluth hospital and 16 technical employees at its satellite locations. The Employer and Petitioner also stipulated to a list setting forth by classification each unrepresented technical employee employed by the Employer at the Duluth hospital and satellite locations.

Petitioner and the Employer agreed to be bound by my decision in St. Mary's Duluth Clinic Health System, Case 18-RC-16399 (St. Mary's), insofar as that decision makes findings of fact and/or conclusions of law with regard to the appropriateness of a residual technical unit, excluding represented licensed practical nurses.³ Therefore, I am attaching a copy of my decision in St. Mary's and, for the reasons cited therein, find that a residual unit of technical employees, excluding licensed practical nurses, employed by the Employer is an appropriate collective-bargaining unit; and that the contract between the Employer and MLPNA does not constitute a bar to the petition herein. Moreover, I note that in this case, unlike St. Mary's, there are no employees currently employed as licensed practical nurses by the Employer who are unrepresented by a labor organization.

³ The parties agreed, however, that should the National Labor Relations Board grant review in St. Mary's or should any federal court rule on the propriety of the Board's decision in St. Mary's in the event the Board issues a decision, the parties are bound by the decision of the Board or federal court reviewing the Board decision—whichever constitutes the final decision.

6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time technical employees employed by the Employer at its Duluth, Eveleth and Grand Rapids, Minnesota facilities and Superior and Ashland, Wisconsin facilities, including pharmacy technicians, radiation therapy technicians, mental health unit technicians, recreation therapists, patient care technicians, radiologic technicians II, medical laboratory technicians, dialysis reprocessing program coordinators, certified laboratory assistants, histology technicians, certified operating room technicians, clinical laboratory technicians, operating room technicians I, certified occupational therapy assistants, senior radiation oncology technicians, dialysis reuse technicians, dosimetrists, and cyto technologists; excluding licensed practical nurses, office clerical employees, guards and supervisors as defined in the National Labor Relations Act, as amended, and all other employees.

DIRECTION OF ELECTION⁴

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who

⁴ Both the Employer and Petitioner have waived their rights to file a request for review of this Decision. In the event either party in St. Mary's files a request for review, I will schedule and conduct the election in this matter consistent with normal Board procedure, including, for example, delaying the election should the Board order me to delay the election in St. Mary's, or impounding the ballots, should the Board order me to impound the ballots in St. Mary's.

have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁵

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by United Steelworkers of America, AFL-CIO, CLC.

Signed at Minneapolis, Minnesota, this 19th day of February, 1999.

/s/ Ronald M. Sharp

Ronald M. Sharp, Regional Director
Eighteenth Region
National Labor Relations Board

Attachment

Index # 470-8800-8840-3300

⁵ To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, 234 Federal Courts Building, 110 South Fourth Street, Minneapolis, MN 55401, on or before February 26, 1999. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.